

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

Steven Ball,

Case No. 1:23-cv-649

Plaintiff,

Hon. Jane M. Beckering

v.

Mary Jo Robinson,

Defendant.

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Proceeding *pro per*
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**PLAINTIFF’S OPPOSITION TO DEFENDANT’S
MOTION/REQUEST TO SET ASIDE DEFAULT**

Plaintiff, Steven Ball, by and through his counsel of record, Michael O. Fawaz of Howard & Howard Attorneys PLLC, hereby submits this brief in opposition to Defendant’s Motion/Request to Set Aside Default [ECF Doc. # 37, “Defendant’s Motion”]¹. In support thereof, Plaintiff states as follows.

INTRODUCTION AND BACKGROUND

By way of relevant background, Plaintiff filed this action on June 23, 2023. (ECF Doc. #1). With leave of court, [ECF Doc. #19], Plaintiff’s First Amended Complaint was filed on September 5, 2023. (ECF Doc. #20). Defendant’s Answer to the First Amended Complaint was

¹ Referring to Defendant’s filing as a “motion” is without waiver to Plaintiff’s argument herein that Defendant has failed to properly submit a motion and that her filing violates this Court’s Local Rules. *See* W.D. Mich. LCivR 7.1.

initially due on September 19, 2023. (ECF Doc. #19). Based on a Stipulation and Order signed by the Court, the Defendant's deadline to Answer was extended to October 3, 2023, and all of these events occurred with guidance that Defendant was receiving from counsel before counsel's withdrawal. (ECF Doc. #21).

Following Defendant's counsel's withdrawal from the matter, the Court entered an Order reiterating that Defendant's Answer was due on or before October 3, 2023. (ECF Doc. #25). Defendant failed to file a timely answer. Instead, on October 3, 2023, Defendant sent a letter to the Court. (ECF Doc. # 29). The letter was not an Answer or pre-Answer Motion and did not include any attempt to submit answers to the allegations in the First Amended Complaint. On October 4, 2023, the Court issued an Order [ECF Doc. #31] and generously construed Defendant's letter as a request for an extension and granted an extension until October 31, 2023 for Defendant to secure new counsel or file a notice indicating that she intends to proceed *pro se*, and to file an Answer or other responsive pleading to the First Amended Complaint. *Id.* The Court also made clear that "additional requests to extend the above deadline will not be granted." *Id.* The Court's Order was unambiguous and clear that Defendant had until October 31, 2023 to "file an answer or other responsive pleading to the First Amended Complaint." *Id.*

October 31, 2023 came and went, and Defendant did not file an Answer, did not file another responsive pleading, did not contact the court for an extension (which the Court said would not be granted any further). On November 1, 2023, Plaintiff submitted an application for entry of default, which was entered on November 2, 2023. (ECF Doc. #35).

On November 13, 2023, Defendant submitted for filing a "Request to Set Aside Default." (ECF Doc. #37). Attached to the document was an order rejecting discovery filed by Defendant

by Magistrate Judge Berens (ECF Doc. #36) and an affidavit about service by mail of some unattached document. (ECF Doc. #37-2).

LEGAL ARGUMENT

Defendant's Motion should be denied for two reasons. In short, the Motion is both procedurally and substantively flawed.

First, the Motion is procedurally flawed and violates the Local Rules in multiple material respects. Local Rule 7.1 requires any motion to be accompanied by a supporting brief, with proper citations to governing rules, statutes, case law or other authorities. W.D. Mich. LCivR 7.1(a). There is no brief and no authority to support Defendant's filing. Indeed, the filing is akin to a letter to the judge, which is also forbidden. *Id.* Further, the rules require evidence to support a motion when the evidence does not appear in the record. W.D. Mich. LCivR 7.1(b). No evidentiary support is provided. Third, the Rule requires a meet and confer; none occurred (although Plaintiff would not agree to this Motion even if it was proper). W.D. Mich. LCivR 7.1(d). Because the Motion fails to abide by the governing rules, it should be denied.

Second, the Motion is substantively deficient. To set aside a default, Defendant must establish good cause. *See* Fed. R. Civ. P. 55. Defendant's Motion offers no good cause for setting aside the default, and none exists. Before her able counsel withdrew, they sought an extension of time for Defendant to submit an Answer and represented to the Court that the Defendant has been apprised. After counsel withdrew, Defendant failed to plead. The Court then granted Defendant an additional nearly 30 days to Answer (thus providing Defendant nearly 60 days in total), the Court made clear what the Defendant was required to do, and the Court instructed the Defendant that she would get no further extensions. Despite this, Defendant not only failed to plead but failed

to comply with a Court Order. In short, Defendant has made no effort to establish good cause and a meritorious defense, and none exist. Thus, the Motion should be denied.

CONCLUSION

WHEREFORE, Defendant's Motion/Request to Set Aside Default should be DENIED.

Certificate of Compliance with Word Count

Undersigned counsel for Plaintiff, in accordance with Local Rule 7.3(b), Plaintiff's Brief, including all headings, footnotes, citations, and quotations (but excluding the case caption, signature block, and other matters excluded under Local Rule 7.3(b)(i)), totals 809 words according to the Microsoft Office 365 Word Program, v.2309.

Respectfully submitted,

HOWARD & HOWARD ATTORNEYS PLLC

Dated: November 21, 2023

By: /s/ Michael O. Fawaz
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CERTIFICATE OF SERVICE

I hereby certify that on November 21, 2023, I electronically filed the Notice of Default and Request for Entry of Default with the Clerk of the Court using the ECF system for filing and transmittal of a Notice of Electronic Filing to the ECF registrants of record.

Additionally, I certify that on the same date, I caused to served, via first class mail, postage fully paid, a copy of the foregoing on Defendant Mary Jo Robison at her home address of 9370 Torch Bridge Court, Rapid City, Michigan, 49676 and via email at torchlakegirl3@hotmail.com.

Respectfully submitted,

HOWARD & HOWARD ATTORNEYS PLLC

Dated: November 21, 2023

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